

CHAPTER IX

MISCELLANEOUS

DRAINAGE ASSESSMENTS

The Indiana Drainage Code, IC 36-9-27, governs the construction, reconstruction and maintenance of ditches and drains. The "Accounting Manual for Public Drainage Funds" prepared by the State Board of Accounts, a copy of which should be available in your office, should be consulted on all questions pertaining to drainage funds.

DELINQUENT BARRETT LAW ASSESSMENTS

Whenever any barrett law principal and interest or any part thereof is not paid when due, the proper fiscal officer charged with the collection of the assessment for the city or town shall, before the first day of June of each year, certify to the county auditor a list of all delinquent assessments, together with a penalty of ten percent (10%) interest per annum (five percent (5%) for each six month period or fraction thereof). The list shall show the name or names of the present owner or owners of each parcel of real estate, the description of the property as shown by the records in the office of the county auditor, and the total of principal, interest and penalty due. [IC 36-9-37-23]

It shall be the duty of the county auditor upon receipt of such list to enter the same in a separate section of the tax duplicate immediately following the taxing district in which the real property is located and transmit the list to the county treasurer for collection. After the county treasurer receives the list, payments on the delinquent assessments shall be made only to the county treasurer and may not be accepted by the municipal fiscal officer. [IC 36-9-37-23]

After the county auditor receives the list of delinquencies from the municipal fiscal officer, the real property on the list is subject to collection by the county treasurer in the same way that delinquent property taxes are collected and may be sold in the manner that property is sold for taxes. [IC 36-9-37-24]

Upon collection of delinquent barrett law assessments and settlement by the treasurer the collections shall be receipted into a separate fund titled "delinquent barrett law assessments" on the records of the county auditor and treasurer and remitted by county warrant to the city or town officer originally charged with such collection.

NO ORDERS DRAWN WHEN NO MONEY

No warrant or order for money shall be drawn upon the treasury of any county, if, at the time, there be no money in the treasury. It shall be the duty of such treasurer to keep the county commissioners, county auditor and other offices authorized to draw such warrants or orders, informed when there is no money in the treasury. [IC 36-2-6-12]

SERVING AS A BANK DIRECTOR

A treasurer is not prohibited from serving as a director of a bank where such bank is a public depository for the county that the treasurer serves.

LUCRATIVE OFFICE

No person shall hold more than one lucrative office at the same time, except as provided in the Constitution. (Article 2, Section 9, Indiana Constitution)

STATE BOARD OF ACCOUNTS - FIELD EXAMINERS

Any field examiner, when engaged in making any examination, shall have the right to enter into any public office and examine any books, papers and documents contained therein or belonging thereto for the purpose of making such examination, and shall have access, in the presence of the custodian thereof, or a deputy, to the cash drawers and cash in the custody of such officer, and shall have the right, during business hours, to examine the public accounts in any depository which has any public funds in its custody.

Such field examiner has authority to call on any officer and examine him/her under oath as to the affairs of the office. The statute provides a penalty in case of refusal of the officer to answer questions concerning the moneys on hand belonging to the county.

FAILURE TO COMPLY

Any public officer who shall fail or neglect to follow the direction of the state examiner in keeping the accounts of the office, or who shall refuse the state examiner, deputy examiner or field examiner access to the books, accounts, papers, documents or cash drawer or cash of the office, or who shall in any way interfere with such examiners in the discharge of their official duties, commits a Class B infraction and forfeits his office. [IC 5-11-1-10]

PUBLIC RECORDS ARE PUBLIC PROPERTY

The records of all public offices are public property and may be examined by any taxpayer. If denied the right by an official to examine the records, the court would grant the taxpayer the right, if proper proceedings were brought for that purpose. The right, however, must not be abused and the demand for the examination must be made at such times as will not interfere with the operation of the office. [IC 5-14-3-1]

PRESERVATION OF RECORDS

It is the duty of the treasurer to carefully preserve and safeguard all official records, documents and papers of the office.

No records of the office may be destroyed or otherwise disposed of unless the provisions of the public records law are observed and prior approval is given by the county commission of public records. [IC 5-15-6]

The State Commission on Public Records has published a booklet titled "Guide for Preservation and Destruction of Public Records," containing detailed instructions and guides on this subject.

OFFICIAL MISCONDUCT

A public servant commits a Class A misdemeanor who:

1. Knowingly or intentionally performs an act that is forbidden by law to perform;
2. Performs an act in excess of lawful authority, with intent to obtain any property;
3. Knowingly or intentionally solicits, accepts, or agrees to accept from appointee or employee any property other than what is authorized by law to accept as a condition of continued employment;
4. Knowingly or intentionally acquires or divests a pecuniary interest in any property, transaction, or enterprise or aids another person to do so, based on information obtained by virtue of the office that official action has not been made public is contemplated;
5. Knowingly or intentionally fails to deliver public records and property in his custody to his successor in office when that successor qualifies; or
6. Knowingly or intentionally violates IC 36-6-4-17(b). [IC 35-44-1-2]

ILLEGAL FEES

Constructive fees in this state are not permissible. Whenever a fee for a particular service is set out in a specific act and also in a general act, it shall be unlawful to charge both fees. [IC 5-7-2-3 to 5-7-2-6]

It shall be unlawful for any board of county commissioners to allow any county, township or other public officer any sum of money out of a county treasury except when the statutes convey the clear and unequivocal authority to do so. [IC 5-7-2-7]

No county or township officer in this state shall charge or receive any fee or sum of money except such fee or sum of money as is specified in the acts. [IC 5-7-2-2]

MONEY FOUND ON DECEASED PERSONS

Money found on deceased persons, if no person is found by the coroner to claim same, shall be placed in the hands of the treasurer. The treasurer shall deliver the money to any person legally authorized to receive it within one year. So much thereof as may be necessary to defray the expenses of such coroner's inquisition and funeral expenses of said body may be, by said treasurer, appropriated and used for that purpose. [IC 36-2-10-21 and 36-2-14-11]

In the event the coroner fails to pay same over to the treasurer, the treasurer shall, in the county treasurer's own name, bring a civil action against the coroner to collect it. [IC 36-2-10-22]

It shall be the duty of the treasurer, if the money aforesaid shall not be called for within one year from the time of receiving same, to place said sum of money to the credit of the county general fund. [IC 36-2-10-21]

BONDS - MANNER OF SALE

All bonds, notes or other evidence of indebtedness of the county shall be executed by the commissioners and attested by the county auditor of said county. Whenever bonds are to be issued, the county auditor shall have them prepared and deliver same to the treasurer. All moneys received therefor shall be paid to the treasurer, who shall thereupon deliver said bonds or notes to the persons entitled to receive them. [IC 36-2-6-20]

ISSUANCE OF DUPLICATE WARRANT

When a county warrant is lost or for some other reason has not been presented for payment by the depository on which drawn, and evidence of this fact is submitted, the county auditor is authorized to issue a duplicate warrant to replace the original warrant; however, certain safeguards should be exercised before the duplicate warrant is issued, as recommended in the following outline:

1. The person, firm or corporation requesting the duplicate warrant should submit to the county auditor an affidavit setting out all pertinent information with reference to such warrant. A separate affidavit should be furnished by the payee and by each party to whom it was endorsed.
2. Immediately upon receipt of the affidavit, the auditor should request the county treasurer to issue a stop payment order on the original warrant to the bank on which it was drawn.
3. Delay issuing the duplicate warrant until the warrants for the month in which the stop payment order was issued are returned by the bank and the county treasurer has verified that the original warrant has not been cashed.
4. Issue the duplicate warrant on the next warrant number of the current series, under current date (not the date it was originally issued), bearing the payee's name, amount and other details shown on the original warrant, but clearly indicate thereon that it is "issued to replace warrant number ____, dated ____, 19__." In this manner no problems should arise when the warrant is presented to the bank for payment, which sometimes happens when it is given the date and number of the original warrant on which payment was stopped. It is not permissible to have unnumbered warrants furnished by the printer for this purpose; always use the next warrant number in the current series but show thereon the warrant number it replaces.
5. The duplicate warrant is not to be posted to the auditor's ledgers since it is issued only for the purpose of replacing the original warrant. To identify it as a duplicate so it will not be posted and added with the disbursements for the month, simply circle the copy in the warrant register or otherwise identify it as a "Duplicate."

A duplicate warrant might, under emergency conditions, be issued within a short time after the stop payment order is given the bank where the bank furnishes a statement that they have checked the paid warrants to date and the warrant in question has not been paid; however, a safe position is to wait until the cancelled warrants for the month in which the stop payment order was issued are returned by the bank and the county treasurer has verified the warrant has not been paid.

STOP PAYMENT ORDERS

Stop payment orders issued to depositories are effective for a period of six (6) months. [IC 26-1-4-403]

CONFERENCES CALLED BY STATE BOARD OF ACCOUNTS

The State Board of Accounts is authorized to call an annual conference of treasurers and may call such other conferences as in the judgment of the state examiner would result in the better conduct of the public business. [IC 5-11-14-1] The primary purpose of such conferences is to instruct treasurers in the proper method of keeping the records.

When conferences are called, the treasurer and such deputies or assistants as named in the called notice, have an obligation to attend such conferences as a part of the duties of the office. [IC 5-11-14-1]

WARRANTS OUTSTANDING AND UNPAID

All warrants outstanding and unpaid for a period of two or more years, as of the last day of December of each year, are void. No individual, bank, trust company, building and loan association, or any other financial institution may honor, cash, or accept for payment or deposit any such warrant or check which may be presented for payment and which has been issued and outstanding for a period of two (2) or more years as of the last day of December of any year. This law further provides that the treasurer within sixty (60) days thereafter shall prepare a list in triplicate of all such warrants, showing the date of issue of each warrant, the fund upon which it was drawn, the name of the payee, the amount of the warrant, and the total amount of the warrants for each fund. The original copy of such list shall be filed with the county board of finance, the duplicate with the county auditor and the triplicate copy retained by the treasurer. Upon receipt of such list, the county auditor shall issue an application to pay, receipt and quietus for such warrants, in the same manner as for any other receipt, and the warrants shall thereupon be removed by the treasurer from the outstanding list. [IC 5-11-10.5-2 through IC 5-11-10.5-6]

DUPLICATE WELFARE WARRANTS

If the lost warrant is a welfare warrant (AFDC, IV E Foster Care and Adoption Assistance), the procedures outlined in State Department of Public Welfare accounting bulletin number 188 must also be followed.

PROCEDURES

Replacement of Lost, Stolen or Forged Assistance, (AFDC, IV E Foster Care and Adoption Assistance) Warrants

Whenever a recipient notifies the County Department of the loss or theft of his/her assistance warrant, the County bookkeeper should:

Issue a stop-payment order within 72 hours of the notification of loss or theft from the recipient;

Inform the recipient that he must immediately complete and sign DPW Form 20, Affidavit for Issuance of Duplicate Warrant, (See ATTACHMENT I), before a replacement warrant will be issued, and that failure to immediately execute said affidavit will delay the replacement of the warrant;

Request a replacement warrant from the county auditor within 24 hours after DPW Form 204 is executed and notarized by the recipient; and

Inform the recipient of the right to appeal to the State Department of Public Welfare if a replacement warrant is not issued within 17 working days after the date the recipient signed the DPW Form 204. (470 IAC 2-4-12)

During the 72 hour period allowed County Departments for issuance of the stop-payment order it should be determined that a warrant was actually mailed to the recipient and that adequate time for delivery of the warrant has passed. Under no circumstances should the County Department refuse to allow the recipient to execute the affidavit when he/she requests to do so.

If the warrant has been cashed and the recipient believes that the signature is not his/her own (forged), a hand written letter stating this fact must be delivered to the County Department.

If fraud is suspected the County Department should conduct an investigation. However, the issuance of a replacement warrant is NOT to be delayed because of the fraud investigation.

METHOD OF PAYMENT OF TAXES - AUTHORIZATION BY TREASURER

Payments to the treasurer for any purpose, including property tax payments, may be made by any of the following financial instruments that the treasurer authorizes for use:

1. Cash.
2. Check.
3. Bank draft.
4. Money order.
5. Bank card or credit card.
6. Electronic funds transfer.
7. Any other financial instrument authorized by the treasurer.

If there is a charge to the treasurer for the use of a financial instrument other than a bank card or credit card, the treasurer shall collect a sum equal to the amount of the charge from the person who uses the financial instrument.

A treasurer may contract with a bank card or credit card vendor for acceptance of bank or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the treasurer or charged directly to the treasurer's account, the treasurer shall collect an official fee that may not exceed the highest transaction charge or discount fee charged to the treasurer by bank or credit card vendors during the most recent collection period from the person using the card.

The authorization of the treasurer is not required for the Bureau of Motor Vehicles or the Bureau of Motor Vehicles Commission to use electronic funds transfer or other financial instruments to transfer funds to the county treasurer. [IC 36-2-10-23]

REGIONAL WATER AND SEWAGE DISTRICTS - DELINQUENT CHARGES

The officer of the district charged with the collection of the rates or charges shall enforce their payment together with the penalty. The officer shall, not more than two (2) times in a year, certify to the county auditor a list of the rates or charges, including the amount of the penalty, that have become delinquent before that time. The list must include the name or names of the owner or owners or each lot, parcel of land, or building on which the rates or charges have become delinquent, the description of the premises as shown by the records of the office of the county auditor, and the amount of the rates or charges together with the amount of the penalty. The officer shall record a copy of the list in the office of the county recorder and the lien then attaches to the real property described from the time of the recording. [IC 13-26-13-2 and IC 13-26-13-3]

The county auditor, in making out the list or roll of taxes or the tax duplicate of land and lots in a district returned for state, county, town, road, city, school, and other taxes that he is required by statute to make between July 1 and December 31 each year, shall include the rates or charges, including the amount of the penalty, on the list, roll of taxes, or the tax duplicate in the appropriate place in respect to the premises on which rates or charges and penalty are due and payable. This should include the name of the owner, the amount of the rates or charges, including penalty to be added to and carried out into one (1) total sum with the other taxes, so that it is collected as one (1) entire sum with the state, county, township, road, city, school, and other taxes.

The rates or charges, including the penalty, appearing on the tax duplicate as a separate amount and also as an amount included in the total amount with the other taxes, shall be carried out with the taxes as they have been estimated by the county auditor as provided by statute into one (1) total and collected as one (1) total sum in the same manner as taxes are collected.

Payment of the rates or charges, including the penalty, and carried in one (1) total with the other taxes, shall be made and enforced in the same manner as is payment of the other taxes on land or buildings, including the payment and enforcement of the other taxes on land or buildings when they are delinquent.

At the time of each semiannual tax settlement, the county treasurer, shall certify to the county auditor all rates or charges, fees, and penalties that have been collected.

The county auditor shall deduct the service charges and certification fees collected by the county treasurer, and pay to the officer the remaining fees and penalties due the district. The county treasurer shall retain the service charges and certification fees that have been collected and deposit the charges and fees in the county general fund. [IC 13-26-13-10]